



बिहार गजट

असाधारण अंक

बिहार सरकार द्वारा प्रकाशित

4 वैशाख 1939 (श0)
(सं0 पटना 307) पटना, सोमवार, 24 अप्रील 2017

निर्वाचन विभाग

अधिसूचना

13 अप्रील 2017

सं0 एम1-0020/2013-10—निर्वाचन अर्जी सं0 1/2014 से संबंधित भारत निर्वाचन आयोग, नई दिल्ली की अधिसूचना सं0 82/ई0पी0/(1/2014)टी0ई0आर0आर0/ई0एस0-1/बी0आर0-एच0पी0/2014: दिनांक 15.12.2016 सर्वसाधारण की जानकारी के लिए पुनः प्रकाशित की जाती है।

बिहार-राज्यपाल के आदेश से,
सोहन कुमार ठाकुर,
संयुक्त सचिव-सह-
संयुक्त मुख्य निर्वाचन पदाधिकारी।

भारत निर्वाचन आयोग

अधिसूचना

निर्वाचन सदन, अशोक रोड, नई दिल्ली-110001 तारीख: 15 दिसम्बर, 2016/24 अग्रहायण, 1938 (शक)

सं० 82/EP/(1/2014)/TERR/ES-1/BR-HP/2014:—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग एतद्वारा निर्वाचन अर्जी सं० 1/2014 में दिये गये उच्च न्यायालय, पटना के तारीख 28 जुलाई, 2016 के आदेश को प्रकाशित करता है।

आदेश से,
सुमीत मुखर्जी,
सचिव,
भारत निर्वाचन आयोग।

ELECTION COMMISSION OF INDIA

NOTIFICATION

*Nirvachan sadan, Ashoka Road New Delhi-110001 Dated: 15th December, 2016/
24 Agrahayana, 1938 (Saka)*

No. 82/EP/(1/2014)/TERR/ES-1/BR-HP/2014:—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby published Order dated the 28th July, 2016 of the High Court of Judicature at Patna in Election Petition No. 1 of 2014.

By order,
SUMIT MUKHERJEE,
Secretary,
Election Commission of India.

IN THE HIGH COURT OF JUDICATURE AT PATNA
Election Petition No.1 of 2014

Ganga Mishra, Advocate Civil Court, Bhabhua, son-of Late Ram Sakhi Mishra, resident of village, Bhabhua Town, Ward No. 3, (North to Patel Chowk), P.O. and P.S.- Bhabhua, District- Kaimur.

--- --- Petitioner/s

Versus

1. Chhedi Paswan, son of late Ram Chandra Paswan, Resident of village Takiya, P.O.- Takiya, P.s.- Sasaram, District- Rohtas. Presently Member of Parliament, Lok Sabha from 34 Sasaram (SC) Parliamentary Constituency.
2. Karra Parasu Ramaiah, son of K. Naraiyah, resident of B3/68, Shastri Nagar, Officers Flat, P.O.- Sadakat Ashram, P.S.- Shastri Nagar, District- Patna.
3. Baleshwar Bharti, son of Late Bachanu Ram, resident of village Sikadi, P.O.- Akhlaipur, P.S.- Bhabhua, District- Kaimur.
4. Meira Kumar, wife of Manjul Kumar, resident of 20, Akbar Road, New Delhi.
5. Geeta Arya, wife of Lakshman Ram, resident of Arya Niwas, Nagapath Amrapali Road, Dehri, P.O.- Dehri, District- Rohtas.
6. Tetri Devi, wife of Mahavir Ram, resident of village Mujiya, P.O.- Telari, P.S. Kudra, District Kaimur.
7. Saroj Ram, son of late Ram Nath Ram, resident of village Amaw, P.O.- Amaw, P.S.- Karamchhath, District- Kaimur (Bhabhua)
8. Nand Lal Ram, son of Butan Ram, resident of village Jalalpur, P.O.- Dhapokhar, P.S.- Karamchaath (Sabar) District- Kaimur (Bhabhua).
9. Ravi Kant Chaudhary son of Late Birbal Chaudhary, resident of village Badhini, P.O.- Harnathpur, P.s.- Mohaniya, District- Kaimur.
10. Raj Narayan Rao, son of Prabhu Ram, resident of village and Post Masaura, P.S.- Durgawati, District.. Kaimur, Bhabhua.
11. Surendra Ram, son of Late Surrya Ram, resident of village Chakiya, P.O.- and P.S.- Kudra, District- Kaimur.

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Appearance :

For the Petitioner/s	:	Mr. Ganga Mishra(In Person)
For the Respondent no. 1	:	Mr. Sanjay Kumar@ Manu Mr. Amit Kumar Malik
For the respondent no. 4	:	Mr. Sarvendra Kumar Verma, Advocate
For the rest respondents	:	Mr. Jai Vardhan Narayan.

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
C.A.V JUDGMENT

Date: 28 -07-2016

The petitioner is an elector from 34 Sasaram (SC) Parliamentary Constituency for which election was held on 10.04.2014 and the result was declared on 16.05.2014. He has filed the election petition under the relevant provisions of the Representation of People Act, 1951 (hereinafter referred to as 'the Act') questioning the validity of the election of the respondent no. 1 who was declared elected at the said parliamentary election having polled the highest number of valid votes. On grant of the said relief, a further prayer is made to order re-election to elect new Member of Parliament from the said constituency in accordance with law. The schedule of the election for 34 Sasaram(SC) Parliamentary Constituency held in 2014 is set out hereinbelow:-

- (i) Last date for filing the nomination paper : 20th March, 2014.
- (ii) Date of presentation of Nomination Paper by the Returned Candidate Shri Chhedi Paswan : 18th March, 2014.
- (iii) Date of scrutiny of Nomination Paper: 22nd March, 2014.
- (iv) Date of withdrawal of the candidature: 25th March, 2014.
- (v) Date of declaration of Result 16th May, 2014. The Respondent no. 1 contested the election on being

Nominated by the Bhartiya Janta Party (BJP). Altogether 11 Candidates contested the election. It is stated that being a voter of 34 Sasaram (SC) Parliamentary Constituency, he has a right under Article 19(1)(a) of the Constitution to know about the contesting candidates including his/their criminal antecedents. It is much more fundamental and basic for survival of a vibrant democracy. A well informed voter can vote judiciously and elect the law maker. By various judgments, the Apex Court has emphasized the legal right of the elector/voter like the petitioner. Any candidate contesting election is required to furnish details regarding his/her criminal antecedent while filing nomination paper. Part-III A of Form-2A as well as paragraph no. 5 of Part-A of Form 26 require detailing of pending criminal cases against the contesting candidate in which the offence is punishable with imprisonment with two years or more. However, the Returned Candidate (Respondent no. I) suppressed the material fact that a criminal case bearing Mohania P.S. Case No. 168 of 2006 dated 08.09.2006 was pending against him in which cognizance was taken by the competent Court in the year 2007. The same was not disclosed in Clause 5(ii) of Form-26. The Returned Candidate had filed his nomination paper on 30.10.2010 to contest the assembly election from 204 Mohania Assembly Constituency and in Form 2A and Form-26, he had detailed all the criminal cases but in the election under question he purposefully suppressed his criminal antecedent by not disclosing pendency of Mohania P.S. Case No. 168 of 2006. Altogether three criminal cases were pending against the Returned Candidate. The first criminal case arose out of Mohania P.S. Case No. 168 of 2006 under Sections 143, 145, 283 and 290 of the Indian Penal Code out of which punishment under Section 145 IPC is two years. In the aforesaid case, charge-sheet had already been filed on 20.02.2007 whereupon cognizance was taken by the learned Chief Judicial Magistrate, Bhabhua in 2007 and the case is pending for final adjudication in the Court of learned S.D.J.M., Bhabhua. In the said case, the Returned Candidate had surrendered on 19.02.2010 and was released on bail on furnishing bond as directed by the Court. The said case is fixed up for attendance. The said case was lodged by the Officer-in-charge of the Police Station against the Returned Candidate and others named and unknown accuseds alleging that Respondent no. 1 along with 60-70 supporters constituting a mob in the afternoon of 08.09.2006 at about 4.30 p.m. sat on the middle of the road and blocked N.H.-2 (G.T. Road) resulting in complete blockage. Even on instruction by the Police, the accuseds did not disperse and

remained static creating public nuisance. The mob was doing so to compel the government to enforce Durgawati Reservoir Project. Another criminal case bearing Mohania P.S. Case No. 28 of 2005 under Section 171(h) of I.P.C. and Section 3(i) of the Bihar Prevention of Defacement of Property Act, 1985 was lodged against the Returned Candidate (Sri Chhedi Paswan) which is also pending before the learned Judicial Magistrate, Bhabhua on a charge-sheet being filed against him and cognizance taken against the petitioners and others on 31.01.2006. The Returned Candidate later surrendered and was enlarged on bail. The third criminal case pending against the Returned Candidate was Mohania P.S. Case No. 206 of 2005 under Section 3(i) of the Bihar Prevention of Defacement of Property Act which is pending trial vide Tr. No. 2987 of 2013. The Returned Candidate is on bail in the said case which is still pending. *Prima facie*: it is established that the Returned Candidate had filled up the nomination paper in 2014 Parliamentary Election by furnishing false affidavit in regard to his pending criminal cases. In one of those three cases, the punishment is two years. The Returning Officer acted contrary to the provisions of the Act and diverse judgments of the Apex Court in illegally accepting the nomination paper of the Respondent no. 1 as valid instead of rejecting the same as per Section 33A of the Act as he was required to furnish the information about his involvement in criminal offence(s) punishable with imprisonment of two years or more and pending consideration before the Court upon filing of charge-sheet. By not furnishing the entire details of his criminal antecedents, the Respondent no. 1 prevented the voter, like the petitioner, from expressing their considered choice at the franchise. The votes thus polled in his favour by the uninformed citizens/voters of 34 Sasaram (SC) Parliamentary Constituency have become meaningless and in strict violation of the fundamental rights of the voters guaranteed under the Constitution. The purity of election and more particularly the transparency in the said election process has been completely frustrated which materially affected the result of the election insofar as it concerns the Returned Candidate. The Returned Candidate in Clause-5 of the Form-26 filled up by him did not record pendency of the Mohania P.S. Case No. 168 of 2006. His nomination paper was liable to be rejected. The Returning Officer illegally/improperly accepted the nomination paper of the respondent (Returned Candidate). In clause 5(ii) of Form-26, the Returned Candidate wrote 'Nil'. This is clear case of suppression of his criminal antecedents.

It is submitted by the election petitioner that with a view to give effect to the judgment of the Apex Court in the case of *Association for Democratic Reforms and Anr. Vs. ECI (2002) 5 SCC 294*, the Election Commission of India (for short 'ECI') issued order on 28.06.2002 authorizing the Returning Officer (R.O.) to reject the nomination paper of the candidate who furnished wrong, incomplete or material information about his antecedent, assets and liabilities of self, spouse and dependents in the affidavit filed along with the nomination paper. The Parliament, in order to give effect to the direction of the Apex Court, inserted Sections 33A, 33B in the Act (Act no. 72 of 2002) w.e.f. 24.08.2002. Section 33A requires the candidate to furnish information under the Act or the rules made thereunder together with his antecedent. Section 33B of the Act requires The contesting candidate to disclose only those information which are required under the Act and the rules and no other information to be disclosed/furnished.

Validity of Section 33B of the Act was challenged in *People's Union for Civil Liberties (PUCL) versus Union of India (2003) 4 SCC 399* and Section 33B was declared ultra vires, however, with prospective effect. It was observed that no exception can be taken to the insistence of affidavit with regard to the matters specified in the judgments of the Supreme Court in the case of *Association for Democratic Reforms (supra)*. The direction of the ECI to the R.O. to reject the nomination paper after making summary enquiry at the time of scrutiny

of nomination paper for furnishing incorrect/wrong information or concealing material information by the candidate was directed to be revised. It is submitted with reference to statements made in paragraph nos. 9, 10, 11, 12 and 13 of the election petition read with the affidavit filed by the respondent no. 1 and his nomination paper (Ext. A) series that the said respondent while filling up the nomination paper and the affidavit wilfully withheld information about the pendency of Mohania P.S. Case No. 168 of 2006 registered under Sections 143, 145, 283 and 290 of the Indian Penal Code in which cognizance was taken and the punishment provided under Section 145 IPC is two years inasmuch as cognizance of the case was taken in 2007. Suppression of the aforesaid fact in the affidavit (Form-26, Clause-5 thereof) is violation of the Right to Information of the electors of the Constituency which resulted in noncompliance of the Article 19(1Xa) of the Constitution. The voters like the election petitioner exercised his/their right to vote without being fully informed of all the particulars/details of the contesting candidate (the respondent no. 1). It is a malpractice adopted at the election and the election of the returned candidate is fit to be set aside under Section 100(1)(d)(iv) of the Act which *inter alia* empowers the High Court to declare the election of the returned candidate as void for noncompliance of the provisions of the Constitution by the returned candidate.

Recently, the Apex Court in *Resurgence India vs. Election Commission of India* (AIR 2014 SC 344) held that a voter has the elementary right to know full particulars of a candidate who is to represent him in the Parliament and such right to get information is universally recognized natural right flowing from the concept of democracy and is an integral part of Article 19(1)(a) of the Constitution. A few more judgments to amplify the said submissions have been relied by the election petitioner which shall be referred in the later part of the judgment.

The Counsel for the Respondent no. 4 fully supported the case of the election petitioner that the election petition raise only one question as to whether the nomination paper of the respondent no. 1 can be rejected and/or declared illegally accepted by the R.O. on account of non-furnishing of his entire criminal antecedent in Column-5(ii) of Form 26 of the nomination paper filed by him in the said parliamentary election held in 2014. The returned candidate had not furnished the details of Mohania P.S. Case No. 168 of 2006 (Ext.-C) in the nomination paper/affidavit in relevant column. In paragraph 5(ii) of Form 26 he had written '*shunya*' (nil) (marked as Ext.B series). The election of the returned candidate is fit to be declared void as it will tantamount to non-compliance of the instructions of the ECI as well practicing corrupt practice to exert undue influence on the electors/voters as provided in Section 100(1)(d)(iv) of the Act.

The Counsel for the respondent no. 1 has opposed the application and the prayer made therein. It is submitted that according to the prescribed form (Form-26), in paragraph 5(ii) thereof the respondent no. 1 was not required to give information of the Mohania P.S. Case No. 168 of 2006 because the charges in the said case had not been framed against him till the date of filing of the nomination paper and even today by the competent Court in which the punishment is imprisonment for two years or more. It was the duty of the ECI to publicize the new format to collect the information regarding the criminal case pending against the contesting candidate in which charge-sheet was filed by the Police against the candidate and cognizance taken by the competent Court. Unfortunately, the ECI did not publicize the new format requiring the candidate to detail relevant facts. There was no space provided in Form-26 to provide such information. Vide information sought in paragraph 5 of Form-26, the candidate was required to enlist only cases pending against the candidate in which the imprisonment is two years or more 'and charges have been framed, by the competent Court. If it is so then only the candidate filling up the affidavit has to proceed further

with sub-para (i) and (ii) of Para-5 of Form-26. Otherwise the contesting candidate is not required to answer sub-para (i) and (ii) of Para-5 of Form-26. In these circumstances, the respondent no. 1, quite bona fide, filled up the relevant column as *shunya' (nil)* in sub-para (i) and (ii) of Para-5 as indisputably no charge was framed in those case(s) against the petitioner in which the imprisonment is two year or more. The details required to be furnished in sub-para (ii) of Para-5 of Form-26, if read carefully, would clarify these facts. It is clearly written in the bracket of sub-para-(ii) "other than the cases mentioned in Item No. 1 above". It is thus more than obvious that if the contesting candidate has furnished relevant information in sub-para (i) which required detailing of the case in which the candidate is accused of any offence in which punishment is two years or more and the charges has been framed by the competent Court, then only the respondent no. 1 was obliged to set out details/information in sub-para (ii) of Para-5 as to whether he has got any other pending criminal case(s). The respondent no. 1 is accused in three cases which are trivial in nature. Out of them, two cases relate to pasting of the posters on the wall without consent during the elections held in 2005 in which the imprisonment is up to six months. In one of these two cases namely Mohania P.S. Case No. 28 of 2005, the respondent no. 1 has been acquitted by the Court. The third case registered in the year 2006 was also trivial as on account of staging peaceful '*dharna*' on the road side of G.T. road, Mohania in order to pressurize the government to take up and commission the Durgawati Project meant for providing irrigation facilities to the agricultural lands of more than two lacs farmers of 34 Sasaram (SC) Parliamentary Constituency, the same was lodged. It is the political right of the citizens in active politics to do so for the benefit of the people of the constituency. The said project has now been commenced. In the above case registered under Section 145 IPC, besides other penal provisions, the punishment provided is up to two years. Hence, under legal advice and considering the requirements of aforesaid paragraph of Form 26, the respondent no. 1 had not disclosed the details of the said case in Form-26. The manner in which Form 26 require detailing of the criminal cases pending against the candidate filling up the form/affidavit in which the punishment provided was up to two years prevented him to enlist the said case. Further, as no charge was framed against the respondent no. 1 in the said case also prevented him from enlisting the said case in Form 26. It was not a case of deliberate suppression of relevant details with a view to deny the electors of his right to know criminal antecedents of the candidate contesting the election.

Upon consideration of the rival pleadings, the Court framed the following issues:

- (I) Whether the election petition as framed is maintainable?
- (II) Whether the election petition is fit to be dismissed summarily under Section 86(1) of the Representation of People's Act, 1951 for noncompliance of the mandatory provisions of Sections 81, 82 & 117 of the said Act?
- (III) Whether the election petition is fit to be dismissed summarily under Order 7 Rule 11 of CPC?
- (IV) Whether under the relevant provision of law the prescribed affidavit contained in Form 26, paragraph 5 requires at all to disclose by a candidate regarding criminal cases only when/where the charges have been framed by the competent court?
- (V) Whether under Article 324 of the Constitution of India giving information on affidavit in nomination paper, Form 26 Column 5(2) by respondent no. 1 relating to any criminal case pending against him in which cognizance has been taken seeking election of member of parliament is a necessary part to be filled up in Form

- 26 Column 5(2) of the nomination paper and failure whereof would result in rejection of the nomination papers?
- (VI) Whether regarding suppression of criminal antecedent in Nomination Paper Form 26 Column 5(2) can be gone into at later stage in the election petition?
- (VII) Whether the suppression of criminal antecedent in Form 26 Column 5(2) of Nomination Paper has materially affected the result of the returned candidate (respondent no. I)?
- (VIII) Whether the respondent no. 1 in the facts and circumstances of the case, was guilty of swearing a false affidavit?
- (IX) Whether the charges were framed against respondent no. 1 in Mohania P.S. Case No. 28/05 (G.R. No. 120/05) by the court of competent jurisdiction?

In support of the case, the election petitioner appeared in person and filed his affidavited examination-in-chief. He was cross-examined by the returned candidate only as the other respondents supporting the election petitioner volunteered not to cross-examine him. No other witness was examined on behalf of the election petitioner. Altogether six witnesses were examined on behalf of the respondent no. 1 namely R.W.-I Arbind Kumar Singh (official), R.W.-II Siya Ram Mandal (official), R.W.-III Rajeev Ranjan Tiwari, R.W.-IV Abhay Kumar Singh, R.W.-V Vishnukant Tiwary and R.W.-VI Chhedi Paswan (respondent no. 1). R.W.-I was the Returning Officer of 34 Sasaram SC Parliamentary Constituency whereas R.W.-II was the Deputy Election Officer during the said Parliamentary Election.

The following documents have been exhibited on behalf of the respondent no. 4..... ..

- (i) Ext. A series - (Form-26 of nomination paper filed by Sri Chhedi Paswan
- (ii) Ext.B series -Nomination paper with annexures filed by Sri Chhedi Paswan in 204 Mohania S.C. Assembly Election 2010.
- (iii) Ext.C series- Annexure-5 series of the election petition (entire order-sheet of Mohania P.S. Case No. 168 of 2006).
- (iv) Ext.D series- Annexure-6 series of the election petition (entire order-sheet of Mohania P.S. Case No. 28 of 2005).
- (v) Ext.E series - Annexure-7 series of the election petition (entire order-sheet of Mohania P.S. Case No. 206 of 2005).

Re. Issue Nos. I, II and III

These issues have not seriously been pressed by the respondent no. 1. However, on going through the pleadings in the election petition and the deposition of the election petitioner, it appears to the Court that Section 86(1) of the Act has been complied with as the election petition is presented as per Section 81 of the Act with a plausible ground that the returned candidate suppressed his criminal antecedent by not complying with the orders and judgment of the Apex Court in the case of *Association for Democratic Reforms (supra)* as well as the directions given in *People's Union for Civil Liberties (supra)*. The election petition alleges that non-compliance of those orders/judgment and directions of the Apex Court merits the nomination paper filed by the returned candidate to be rejected. The election petition was presented within the stipulated time from the date of declaration of result of the election and further it complies with the provisions of Sections 82 and 117 of the Act. These issues are decided in favour of the election petitioner.

Re. Issue No. VII

For better appreciation of the case, this issue is taken up for consideration out of turn. The election petition in paragraph 22 has asserted that non-compliance of the

Constitution and the provisions of the Act and the rules and the orders made thereunder, the election of the returned candidate is fit to be declared void insofar as it concerns the returned candidate as the election on account of illegal acceptance of the nomination paper filed by the returned candidate has materially affected the election. In case the Court holds the nomination paper submitted by the returned candidate was illegally or improperly accepted then the election of the returned candidate is bound to be declared as void. Naturally, it would amount to materially affecting the result of the returned candidate. Though, not much submissions have been advanced on this issue by the respondent no. 1 (returned candidate) yet this Court would note that in the case of *Krishnamurti vs. Shiv Kumar and Ors.* 2015 AIR SCW 2688, in paragraph 86(e) the Apex Court observed that in a case like this, the question whether it materially affects the election or not will not arise. Consequently, the Court has no difficulty to conclude that in case the Court accepts the contention of the election petitioner on the main issues then the result of the election can be held to have materially affected. No further discussion in the light of the pleadings and the evidence adduced in support thereof require to be noticed with a view to amplify the point/issue.

Re.- Issue Nos. IV, V and VI

These issues are genetically interlinked and have been considered together. There is also agreement at Bar that they are interlinked and the crucial issues falling for consideration in the election petition which shall determine the fate of the election petition. Relevant pleadings in this regard have been made in paragraph nos. 7 to 16 of the election petition. Before the Court notices the oral evidence adduced by the parties on these issues, it is apt to notice the documents/exhibits available on record on these issues. Ext. -A series is Form 26 of the nomination paper filed by Sri Chhedi Paswan (respondent no. 1) at the relevant election. Paragraph 5(i) thereof requires the candidate to set out details of cases pending against him in which punishment provided is two years or above and the Court of competent jurisdiction has framed the charges. The Returned candidate filled up all the succeeding columns of paragraph no. 5(i) of Form-26 as 'shunya' (nil). Then comes paragraph 5 (ii) which requires the candidate to enlist or detail criminal cases pending against him in which the Court has taken cognizance'. Again the respondent no. 1 filled up the succeeding column(s) of the said paragraph as 'shunya' (nil). There is no denial of the case of the election petitioner that during the relevant time, three criminal cases were pending in Court against the respondent no. 1 out of which one case being Mohania P.S. Case No. 168 of 2006 was lodged, on amongst others, under section 145 IPC wherein punishment provided is two years. Ext.C series is Annexure-5 series of the election petition which is the entire order-sheet of Mohania P.S. Case No. 168 of 2006. . On perusal of the order-sheet, it appears charge-sheet was submitted in the said case in August, 2007 under Sections 143, 145, 283 and 290 of the Indian Penal Code whereafter cognizance was taken by the learned Chief Judicial Magistrate, Bhabhua, Kaimur. The Respondent no. 1 in the said case surrendered in Court and was granted bail on 19.2.2010. Ext. D series and E series are similarly the entire order-sheet of Mohania P.S. Case No. 28 of 2005 and Mohania P.S. Case No. 206 of 2005 respectively in which the respondent no. 1 was cited as accused for having committed trivial offence relating to election in which punishment provided is less than one year. They are not material for adjudication of the issues as put up by the election petitioner.

In the examination-in-chief, the election petitioner has stated that respondent no. 1 suppressed his aforesaid criminal antecedent in Form -26 of the nomination paper filed by him to contest the election. The respondent no. 1 stated in paragraph 5(ii) of Form-26 as

`shunya' (nil) although in the previous Assembly election contested by Respondent no. 1 from 204 Mohania SC Assembly Election held in 2010, he had disclosed details of these cases. The nomination paper filed by the returned candidate to contest 204 Mohania SC Assembly Election held in 2010 is available on record as Ext. B series. The election petitioner has stated that in not doing so by the returned candidate, the election of the returned candidate in the light- of the order of Apex Court stands vitiated in law. The respondent no. 1 has made right to vote meaningless by not informing the citizens/electors about his criminal antecedents in the present Parliamentary Election. R.W.-II Siya Ram Mandal (official witness) examined by respondent no. 4 has proved the nomination paper filed by the returned candidate (respondent no. 1) to contest 34 Sasaram SC parliamentary election. He has stated that the returned candidate filled up Column 5(ii) of Form-26 of nomination paper as `shunya' (nil). He has identified the nomination paper filed by returned candidate to contest 204 Mohania SC Assembly Election held in 2010.

R.W.-1 Arvind Kumar Singh (official) examined on behalf of respondent no. 4 was the Returning Officer of the Parliamentary Election held on 10.04.2014. On going through the nomination paper filed by the returned candidate, he has stated that the respondent no. 1 had filled `shunya' (nil) against all columns of paragraph 5(ii) of Form 26. He identified signature(s) of the returned candidate put on these documents/affidavits. According to handbook for the Returning Officer(s), if the prescribed affidavits have not been filled up at all by the candidate or filled up with defects or containing false information, the nomination papers are liable to be rejected on this ground. Not much has been elicited in the cross-examination of this witness on this point by the returned candidate.

R.W.-III (Rajeev Ranjan Tiwari), R.W.-IV (Abhay Kumar Singh), R.W.-V Bishnu Kant Tiwary are other witnesses. In sum and substance, the evidence of R.W.-III to R.W.-V is to the effect that they cast vote knowing well that cases relating to violation of Code of Conduct during the Election were pending against the respondent no. 1. In one case, the returned candidate was framed for leading an agitation (*dharna*) in order to pressurize the Government to commission the Durgawati Project. Sri Chhedi Paswan (returned candidate) was a candidate of clean image.

R.W.-VI is the respondent no. 1 himself. In his examination-in-chief, he has stated that he is in active politics and has been elected on several times as Member of Parliament as well as Member of State Legislative Assembly. Three criminal cases were pending when he contested 2014 Parliamentary Election out of which two related to the violation of Moral Code of Conduct whereas one related to staging *dharna*. In one case relating to violation of Moral Code of Conduct, he has been acquitted. However, remaining two cases are still pending. He had not set out details of criminal cases in Form-26 to contest the present election while filling up the nomination paper. He did not consider it necessary to give out the details as in none of three cases, charges were framed. Although, in the previous Assembly Election contested by him in 2010, he had set out details of those cases which was a mistake. As no charge was framed in these cases, he did not think it appropriate to repeat the mistake. Section 145 IPC case was initiated against him as he sat on *dharna* for immediate commission of the Durgawati Reservoir Project which was beneficial for the people of the constituency. While sitting on *dharna*, he had not obstructed the flow of traffic on the road. It was a peaceful *dharna*. This witness has been cross-examined by the election petitioner as well as respondent no. 4. In cross-examination, he has admitted mentioning of these cases in the nomination form filed by him to contest the previous Assembly election. Looking to the nomination papers filed by him in the present election, the witness has stated that against Column 5(ii), he had written `shunya' (nil). By sitting on *dharna*, he had not committed any criminal offence.

Relevant law on this point in the backdrop whereof the election petition requires to be considered shall now be examined. The Hon'ble Apex Court in *Association for Democratic Reforms (supra)* found Right to Information a basic tenet of Right to Freedom of Speech and Expression enshrined under Article 19(1)(a) of the Constitution and directed the ECI to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or State Legislature as a necessary part of his nomination paper furnishing information, on amongst others, the following aspects in relation to his/her candidature:-

"Prior to six months of filing of nomination whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the Court of law. If so, the details thereof."

In order to give effect to the directions of the Supreme Court, the Act was amended by Act No. 72 of 2002 and Sections 33A and 33B were inserted: Section 33A requires candidate seeking election to furnish information required under the Act and the rules as also the antecedent in the affidavit to be furnished along with the nomination paper. Section 33B, however, required the contesting candidate to disclose only those information which are required under the Act and the Rules and no other information was required to be disclosed under judgment and decree or order of any Court. The constitutional validity of Section 33B of the Act was challenged before the Apex Court in *People's Union for Civil Liberties (supra)*. Under judgment dated 13.03.2003, Section 33B was held *ultra vires* with prospective effect observing that no exception can be taken to the insistence of affidavit with regard to the matters specified in the judgment in the case of *Association for Democratic Reforms and Anr. (supra)* (refer paragraph 73, 78 and 123 of the judgment).

Again the Apex Court in *Resurgence India vs. ECI (AIR 2014 SC 344)* reinforced the judgment rendered in *People's Union for Civil Liberties (supra)* and held that the voter has the elementary right to know full particulars of a candidate who is to represent him in the Parliament/Assemblies which flows from Article 19(1)(a) of the Constitution. Affidavit filled with blank was required to be rejected by the Returning Officer. Further evolution of the law on the subject, however, can be noticed from the judgment of the Apex Court in the case of *Krishnamoorthy (supra)*. The Apex Court discussed all the previous celebrated decisions and observed that non-disclosure of the relevant details would amount to undue influence constituting corrupt practice as defined under the Act and the election of the Returned candidate can be declared null and void under Section 100(1)(b) of the Act. In the light of those orders, the ECI required an affidavit in Form 26, Clause (5) whereof reads as under:- "I am/am not accused of any offence(s) punishable with imprisonment for two years or more in a pending case(s) in which a charge(s) has/have been framed by the Court(s) of competent jurisdiction."

Paragraph 5(1) reads as under:-

"(i) The following case(s) is/are pending against me in which charges have been framed by the Court for an offence punishable with imprisonment for two years or more."

Paragraph 5(ii) thereof reads as under:-

"The following case(s) is/are pending against me in which cognizance has been taken by the Court other than the cases mentioned in Item (i) above."

The Apex Court in the said case in paragraph 86, however, while summing up the conclusions in sub-para (a) held disclosure of criminal antecedent of a candidate, especially, pertaining to heinous or serious offence or offences relating to corruption or moral turpitude at the time of filing of nomination paper as amended by law is a categorical imperative.

In paragraph (e) thereof, as noticed earlier, it was held that question which had materially affected the election or not will not arise in a case of this nature.

I have noticed the relevant evidence adduced by the parties on the point of disclosure or non-disclosure of the antecedent of the respondent no. 1. From the evidence of R.W.-VI (respondent no. 1), it is seen that the witness has admitted that he wrote 'shunya' in each column of paragraph 5(ii) of Form-26 (the affidavit). He has given an explanation that the same was done as he was not advised to disclose those cases pending against him in which only cognizance was taken under penal provision providing punishment for two years but no charge was framed by the Court of competent jurisdiction. He has further stated that as he filled 'shunya' (nil) in the preceding paragraph of the affidavit and, as such, he was not required to detail other pending cases in which only cognizance was taken by the Court and no charge was framed. The words other than those in preceding paragraph appearing in paragraph 5(ii) of Form-26, according to him, did not require him to disclose details of those cases. The other nonofficial witness adduced on his behalf have stated that the one case then pending against the respondent no. 1 under Section 145 IPC where punishment provided is two years related to staging dharna on road for the betterment of the cultivators/voters of the constituency. A plea has been taken that the offence was trivial in nature and related to the right of the political leaders to protest against non-implementation of developmental project(s) in the Parliamentary Constituency in which not even charge was framed. He did not detail the said case and wrote 'shunya' (nil).

On the other hand, it has been urged on behalf of the election petitioner as well as the supporting respondents that the respondent no. 1 was legally obliged to detail the cases pending against him in paragraph 5(ii) of Form-26 where cognizance was taken by the Court and his failure to do so shall amount to infringement of the fundamental rights of the voters to know the antecedent of the contesting candidate and the election of the returned candidate merits to be declared null and void as Respondent no. 1 by not disclosing those cases in paragraph 5(ii) of Form-26 shall be held to have exercised undue influence on the voters/electors which is a ground under the Act to set aside the election.

The ECI issued guidelines to the contesting candidates as well as the Returning Officers on 1st August 2012 in which the *Association for Democratic Reforms (supra)* and *People's Union for Civil Liberties (supra)* judgments were required to be complied with. Form 26 as given in the Act (Ext.A) is on record. Copies of the handbook of the candidate as well as for the Returning Officer have been produced in course of argument for perusal of the Court. As noticed, the respondent no. 1 filled up the relevant paragraph of Form-26 as 'shunya' (nil). The word 'Constitution' used in 100(1)(d)(iv) of the Act is generic, purpose oriented and cannot be controlled by the provisions of the Constitution enumerated in Section 36 of the Act. There has been infraction of the requirements of law as directed by Hon'ble Supreme Court in the judgments referred to above at the hands of respondent no. 1. I have further concluded that if it is found so the election of respondent no. 1 from 34 Sasaram SC Parliamentary Constituency held in 2014 is fit to be declared void as the respondent no. 1 shall be held to have exercised undue influence during the course of said election which is a corrupt practice within the meaning of the Act. It has been strenuously submitted on behalf of the respondent no. 1 that the Mohania P.S. Case No. 168 of 2006 was instituted under minor sections of the Penal Code which include Section 145 IPC in relation to staging of *dharna* or blocking of the road for immediate implementation of a water project in the Constituency for the benefit of the people/voters at large. It is one of the rights of a citizen who is in active politics to do so. Triviality of the offence in which the contesting

candidate is involved, in my view, would not be of much consequence. A contesting candidate, according to the requirements of law, is mandated to disclose his past criminal antecedents where the possible conviction is two years or more. The punishment provided for the offence to be disclosed as the antecedent itself suggest that the contesting candidate may have serious offences registered against him in which either cognizance has been taken or charges framed. Yet the law mandates for disclosure thereof. In *Association for Democratic Reforms (supra)* reinforced in *People's Union for Civil Liberties (supra)*, the Apex Court found the electors right to know the antecedent of a contesting candidate as a facet of right to freedom of speech and expression enshrined in Article 19(1)(a) of the Constitution. What has been held in *Association for Democratic Reforms (supra)* is that the contesting candidate must disclose in relevant form on affidavit the criminal casts instituted against the contesting candidate prior to six months of filing of nomination as to whether the candidate is accused in any pending case, of any offence punishable with imprisonment with two years or more, and in which charge is framed or cognizance is taken by the Court of Law. It is in this context paragraph 5(i) and 5(ii) of Form-26 can be seen and appreciated. Indisputably, cognizance of the case by competent Court of Law was taken in Mohania P.S. Case No..I68 of 2006. In fact, the Respondent no. 1 had disclosed the pendency of the aforesaid case while filing his nomination paper to contest 204 Mohania Assembly Constituency held in 2010. The same was, however, not disclosed to contest the present election. In the circumstances, for such non-compliance of the provisions of the Act, the order issued by the ECI under Article 324 of the Constitution and breach of Article 19(1)(a) of the Constitution, the election of respondent no. 1 from 34 Sasaram (SC) Parliamentary Constituency is liable to be held as null and void as the respondent no. 1 suffered from constitutional disability. These issues are, accordingly, decided in favour of the election petitioner. Remaining issues being not relevant have not been pressed by the parties.

In the light of discussions made hereinabove, the election of respondent no. 1 from 34 Sasaram (SC) Parliamentary Constituency held on 10.04.2014 is declared null and void.

IN THE HIGH COURT OF JUDICATURE AT PATNA
Election Petition No.1 of 2014

Ganga Mishra		--- --- Petitioner/s
	Versus	
Chhedi Paswan & Ors		--- --- Respondent/s
Appearance :		
For the Petitioner/s	:	Mr. Ganga Mishra(In Person)
For the Respondent/s	:	Mr. Sanjay Kumar @ Manu

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL ORDER

46 02-08-2016 Both sides present.

This case has been listed at the behest of the respondents other than the contesting respondent(s) for effecting corrections(s) of certain typographical mistakes in the judgment dated 28.07.2016.

Having heard the parties, the following corrections are made:

- (i) At page 10, 5th line from bottom of the judgment, the word (mil) shall be read as (nil).
- (ii) At page 14, 7th line of the judgment, in place of respondent no. 1, it shall be read as respondent(s).

(iii) At page 14, in the last line of the second paragraph of the judgment, in place of "following documents have been exhibited on behalf of the respondent", it shall be read as the following documents have been exhibited on behalf of the respondent no. 4 (Ext. A series, Ext. B series) and the election petitioner (Ext. C series, Ext. D series and Ext. E series). ,

(iv) At page 26, 5th line from bottom of the judgment, it shall be read as 100(1)(d)(iv) in place of 100(1)(d)v).

The judgment dated 28.07.2016 is modified to that extent only ,.

(Kishore Kumar Mandal, J)

अधीक्षक, सचिवालय मुद्रणालय,

बिहार, पटना द्वारा प्रकाशित एवं मुद्रित।

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